IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.2192 OF 1990

Shri Ashok Sadashiv Shinde,

Age about 32 years,

residing at Post Machnoor,

Taluka Mangalwedha, Dist:Solapur. .. Petitioner.

Vs

1. Head Master, Shri Siddheshwar

Vidya Mandir, Machnoor

tal.Mangalwedha, Dist:Solapur,

2. Siddha Sarana Sangh, Machnoor,

Tal.Mangalwedha, Dist: Solapur

(Through Secretary/Chairman),

3. The Chairman, School Committee,

S.S.V.M., Machnoor,Tal.Mangalwedha,

Dist: Solapur.

4. The Secretary/Chairman

Siddha Sarana Sangh, A/P

Machnoor, Tal.Mangalwedha,

Dist.Solapur. .. Respondents.

Mr S.G.Deshmukh, for the petitioner.

Mr Dilip Bodake, for the respondents.

CORAM : D.B.BHOSALE,J.

DATE : 20th October, 2004.

ORAL JUDGMENT :

1. By means of this petition, the petitioner has challenged the Judgment and order dated 16.11.1987 rendered by the Presiding Officer, School Tribunal, Pune Region, Pune, in Appeal No.114 of 1987, by which his appeal has been dismissed. The petitioner was an Assistant Teacher working in the school run by respondent no.2-trust. In appeal, he had challenged the termination of his service with effect from the end of an academic year 1985-86.

2. Before going to the merits of the case, it would be advantageous to make reference to the subsequent developments and the orders passed by this Court on 21.4.2004 and 21.7.2004 in the present writ petition and the order dated 1.10.2004 passed in the two civil applications in the First Appeal pending in this Court. The subject matter of the First Appeal is the dispute between the trustees interse of respondent no.2-trust. The petitioner filed Civil Application No. 643 of 2004 for disposing of the writ petition in terms of the Minutes of order placed on record along with the civil application. On that date, one Vasantrao Namdeo Jadhav appeared in person claiming himself to be the Chief Trustee of the respondent no.2-trust. He filed an affidavit on record stating that the trust is prepared

to reinstate the petitioner without back wages. The Minutes of order signed by the petitioner and Namdeo Jadhav on behalf of respondent no.2 were taken on record. However, the matter could not be disposed of since the Minutes of order was signed only by Jadhav, claiming to be the Chief Trustee of the respondent no.2-trust. The Minutes of Order duly singed by Namdeo Jadhav for respondent no.2 and the petitioner placed on record on 2.4.2004, read thus:

Minutes of Order

1. The respondent no.2 hereby undertake to reinstate the petitioner in service with effect from the date of his order.

2. The petitioner hereby gives up his entire claim for back wages from the date of impugned termination of his services against the respondent/management.

3. The petitioner shall be treated to be in continuous service of Shree Sideshwar Vidya Mandir, Machnoor from the date of his initial appointment namely 2/9/1985.

4. The respondent no.1-management shall pass necessary Resolution to give benefit to the petitioner of the continuity of his employment and forward the same to the concerned authorities of Department of Education. Such benefit to the petitioner shall be subject to the sanction by the authorities of the Department of Education and in case the authorities of the Department of Education refuse to grant or to give such benefit to the petitioner on any

> ground, the petitioner shall be at liberty to take appropriate steps in that regard against the authorities of the Department of Education and shall not hold the respondent no.1-management liable for any consequences thereof.
> 5. The allegations made by the parties against each other are hereby withdrawn.
> 6. Parties to bear their own costs in this petition.

Though it was observed in the order dated 2.4.2004 that it is open for respondent no. 2 to reinstate the petitioner as Assistant Teacher as stated in the affidavit, the petitioner has not been reinstated so far.

3. The petition was thereafter placed for final hearing on 21.7.2004. A serious dispute was raised by Mr Bodake, learned Advocate on record for all the respondents. After hearing the learned counsel appearing for the parties, this Court passed the order dated 21.7.2004. It reads thus :

> "1. There is serious dispute between the parties regarding factum of who are the trustees of the Siddha Sarna Sangh, Machnoor. If Mr Bodake for respondent no.2 is right in contending that Vasantrao Namdeo Jadhav has no concern with the present body of Trustees, then obviously, the petitioner cannot seek enforcement of the Consent Terms arrived at by him with the said Vasantrao Namdeo Jadhav, who represented himself to this Court as the Chief Trustee of the Trust, as noted in the order dated 2nd April,

2004.

2. Instead of disposing of the writ petition on the basis of consent terms, it is now agreed that the writ petition itself be heard on merits and finally disposed of on one way or the other.

3. As writ petition is pending since year 1990 and relates to the order of reinstatement, place this matter under caption final disposal in Part-I list in the week commencing from 18th October, 2004.

4. It is made clear that I am not expressing any opinion for the time being with regard to the order passed by this Court on 2nd April, 2004."

4. The four trustees, who were claiming to be the trustees of respondent no.2-trust, were Shri Govind Laxman Pujari, Shri Ramchandra Nana Dhanve, Shri Jayantrao Baburao Jakhal and Shripad Shankar Vibhute. They were removed by the Jt.Charity Commissioner from the trusteeship of respondent no.2-trust by order dated 25.10.2002. That order was challenged by the said trustees before the learned Addl.District Judge, Pandharpur who, by order dated 12.11.2003, set aside the judgment and order passed by the Jt. Charity Commissioner and remanded the matter to the Jt.Charity Commissioner, Latur for fresh enquiry. The judgment of the Addl.District Judge dated 12.11.2003 was challenged by Vasantrao Namdeo Jadhav and two others by way of First Appeal No.1591 of 2003. The First Appeal was admitted by this Court and the order impugned in the

appeal was stayed pending hearing and final disposal of the First Appeal. In the said appeal, two Civil Application Nos. 3090 of 2004 and 3091 of 2004 were filed, first by Govind Laxman Pujari & Ors and second by and Vasantrao Namdeo Pujari and Ors. The civil application filed by Govind Laxman Pujari, bearing no. 3090 of 2004 was dismissed by this Court vide order dated 1.10.2004 and in so far as civil application no.3091 of 2004 filed Vasantrao Namdeo Jadhav is concerned, this Court, while allowing the said civil application in paragraph nos 5 and 6 of the order observed thus:

> "5. So far as Civil application no.3091 of 2004 filed by remaining three trustees is concerned, it is for order of injunction restraining the respondents no.1 to 4 from acting as trustees of the trust during the pendency of the First Appeal. In fact, such separate application need not have been filed in view of order dated 1.12.2003. However, it was submitted by Mr Deshmukh, the counsel for the applicant in this application, that the record is sufficient to speak about the activities of respondent nos.1 to 4 and therefore positive order of injunction was necessary against them. I agree with the same preposition, especially in view of positive findings recorded by learned Jt.Charity Commissioner in this regard by his order dated 25.10.2002, which show atleast prima facie the affairs of the trust, including the financial affairs, should not be handled by respondent nos 1 to 4 in this regard. Hence, the application no.3091 of 2004

> is made absolute in terms of prayer clause (a).
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> 6. At this stage the learned counsel for the applicant nos 1 to 6 Mr Walawalkar submitted that this order should not take effect for four weeks, as they may consider to file appeal against the order. However, I am not inclined to grant any time in this regard, which would amount to putting premium on illegalities, prima facie committed by respondent nos 1 to 4 trustees."

5. The net result of the order passed by this Court dated 1.10.2004 in the aforesaid civil applications filed in the First Appeal is that Govind Laxman Pujari and three others are restrained from handling the affairs of respondent no.2-trust. In so far as Vasantrao Namdeo Jadhav and two Ors are concerned, as a result of the order dated 1.10.2004, they are allowed to function as trustees of respondent no.2. It is against this backdrop, Mr Deshmukh, learned counsel for the petitioner, submits that the trustees for whom Mr Bodake, learned counsel for the respondents appears, cannot represent them in the instant writ petition and Vasantrao Namdeo Jadhav, who filed the affidavit dated 2.4.2004, be allowed to represent respondent no.2-trust and the order be passed in terms of the Minutes of order which were taken on record on 2.4.2004 duly signed by Vasantrao Namdeo Jadhav and the petitioner. Mr Deshmukh strongly objected appearance of Mr Bodake for respondent No.2-trust in view of the order of this court dated

1.10.2004. Mr Bodake had initially filed appearance for all the respondents, however, in view of the order of this Court dated 1.10.2004 he fairly stated that he may be allowed to represent atleast respondent no.1. However, keeping in view that the question of trusteeship is the subject matter of the First Appeal in this Court I allowed Mr Bodake to argue on behalf of respondent no.1 and the four trustees against whom the order dated 1.10.2004 came to be passed by this Court. I heard both the learned counsel for the parties at length.

6. From perusal of the judgment dated 16.11.1987, it is clear that except the point of limitation, all other points on merits were answered in favour of the petitioner. In view thereof, the learned counsel appearing for the parties confined their arguments only on the findings on the points 5(a) and 5(b) as framed by the Charity Commissioner. Mr Bodake, fairly stated that he is not addressing the Court on any other points. With the assistance of the learned counsel appearing for the parties, I went through the paragraph nos 12 to 18 of the impugned judgment dealing with point nos 5(a) and 5(b), which read thus;

> 5(a) Whether the appellant has sufficient cause for not preferring the appeal within time?
> 5(b) Whether the delay in preferring the appeal deserves to be condoned?

7. Admittedly, there was a delay of one year, three months and 23 days in filing the appeal. The petitioner sought condonation of delay on three grounds. Firstly, that respondent no.2, after termination of service on 29.3.1986 kept on giving him assurance that he would be taken back in the service from the next academic year and therefore he did not approach the Tribunal immediately after his termination. Secondly, he also placed the medical certificates on record to show that he was suffering from some ailment which prevented him from filing the appeal within time and thirdly, that he was not aware that there exists the School Tribunal in Solapur which he came to know for the first time in June, 1987 when one of his co-employees in the school obtained orders of the Tribunal in June, 1987. The learned Presiding Officer of the Tribunal rejected the application seeking condonation of delay on all the three grounds by recording his reasons in paragraph nos.12 to 18 of the impugned judgment. In so far a first ground is concerned the learned Presiding Officer held that the petitioner did not bring independent evidence to show that he was given assurance that he would be taken back in service during the academic year 1986-87. The second ground of the the illness was rejected by the Tribunal holding that the illness that

was suffered by the petitioner was not so serious as to confine him to bed from 12.9.86 to 6.6.87. The Tribunal has also observed that no satisfactory explanation was forthcoming as to why the petitioner was taking treatment from a doctor at Mangalvedha, though the local doctor was available at village Machnoor. Mangalvedha is a Taluka place and he was taking treatment from Dr. Page at Mangalvedha. The evidence of medical certificates was further rejected on the ground that the petitioner did not and could not file an affidavit of Dr.Page in support of the medical certificates. The Tribunal has also observed that after getting well from his illness on 6.6.1987 the petitioner did not explain the further delay of two month, i.e. From 6.6.1987 to 20.8.1987. The third ground was rejected holding that it was imaginary and unworthy of any credence.

8. Mr Deshmukh, learned counsel for the petitioner, at the outset, submitted that there was absolutely no reason for the petitioner to approach the Tribunal against the order of his termination belatedly. In any case, the delay in approaching the Tribunal was not deliberate and no malafide could be attributed to the petitioner since approaching the Tribunal was not in his interest. He placed heavy reliance on the judgment of the Apex Court in **N.Balakrishnan Vs. M.Krishnamurthy, (1998) 7 SCC 123 and in Colelctor,Land Acquisition,**

Anantnag and anr V. Mst Katiji and ors, AIR 1987 SC 1353. On the other hand, Mr Bodake, learned counsel for respondent no.1, submitted that the petitioner miserably failed to show sufficient cause for condonation of delay of one year three months and twenty days and his prayer for condonation of delay was rightly rejected by the Tribunal. He took me through the findings recorded by the Tribunal once again to contend that the medical certificates were supported by an affidavit of the doctor and, therefore, that evidence was rightly discarded by the Tribunal. He further submitted that even if it is assumed that the petitioner was suffering from illness, it cannot be said that he was confined to bed and he was not in a position to move at all so as to take steps to challenge the order of his termination. Even after curing from his illness, the petitioner did not show any diligence in filing the appeal for more than two months and in view thereof the appeal was rightly dismissed on that count. According to Mr Bodake, in any case, the explanation offered by the petitioner was neither reasonable nor satisfactory which is a prerequisite condition to condone the delay and, therefore, the impugned order does not deserve interference by this Court under Article 227 of the Constitution of India. He placed reliance on the Judgments of the Apex Court in **P.K.Ramachandran V.State**

of Kerala JT 1997 (8) SC 189, Ashis Kumar Hazra V. Rubi Park Co-operative Hsg So Ltd and or, AIR 1997 Supreme Court 2724 and the judgment of this Court in Mahavira Trading Company & Ors Vs. Smt Nayan N Teli and ors, 1999(4) All MR 57. I have perused the findings recorded by the Tribunal on point nos 5(a) and 5(b) carefully and other material placed before me including the judgments relied upon by the learned counsel appearing for the parties.

9. The petitioner sought to condone the delay on three grounds as mentioned earlier. The Tribunal has rejected the first ground holding that the petitioner has not produced any evidence on record regarding the assurances given by the trustees of respondent no.2-trust. The Tribunal stretched the case too far by expecting the trustees to give in writing to the employee, whose services have been terminated, that they would take him back in the service from the next academic year. But, at the same time, it was quite natural for an employee, who has lost the job, to believe the trustees and rely on their assurances hoping to get back in the service. Possibility, in the present case, of assurances cannot be totally ruled out. Otherwise, I do not see any reason for the petitioner to wait for more than one year for approaching the Tribunal challenging the order of his termination. The delay in challenging

the order was not in the interest of the petitioner at all. In any case, it cannot be said that the petitioner by not approaching the Tribunal promptly resorted to dilatory tactics or it was deliberate to gain time. His action, therefore, cannot be termed as malafide. The Apex Court in N. Balakrishnan case (supra), while interpreting the provisions of section 5 of the Limitation Act, in paragraph nos 10 to 13 made certain observations which may be useful for deciding the question raised in the writ petition.

> "10. ... . The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.
>
> 11. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on

public policy. It is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that the parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12. A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide Shakuntala Devi Jain Vs. Kuntal Kumari and State of W.B. V. Administrator, Howrah Municipality.

13. It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. While condoning, the delay, the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant, the court shall compensate the opposite party for his loss".

(emphasis supplied)

9.1 The Apex Court in Collector, Land Acquisition, Anantnag case (supra), while dealing with the provisions of Section 5 of the Limitation Act, in paragraph 3 of the Judgment held thus:

> "3. The legislature has conferred the power to condone delay by enacting S.5 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on 'merits'. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that :--
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> 1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
>
> 2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
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> 3. "Everyday's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's

> delay, every second's delay? The doctrine must be applied in rational common sense pragmatic manner.
>
> 4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.
>
> 5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of malafides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.
>
> 6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.
>
> (emphasis supplied)

It is thus clear that the legislature has conferred the power to condone delay by enacting S.5 of the Indian Limitation act of 1963 in order to enable the Courts to do substantial justice to the parties by disposing of matters on merits. The expression "sufficient cause" is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice. The petitioner, in the present case, was not benefited by lodging the appeal late. As a matter of fact, in view the overall facts and circumstances of the present case, refusal to condone delay would undoubtedly result in meritorious matter being thrown out at the

very threshold and cause of justice being defeated. There is absolutely nothing on record to show that the delay in the instant case was occasioned deliberately or on account of culpable negligence or on account of mala fides. The petitioner was, in fact, running a serious risk by approaching the appellate Court late. Even the other ground mentioned by the petitioner seeking condonation of delay also deserve to be accepted. It was wrong on the part of the Tribunal to draw an inference that the illness of the petitioner was not so serious as to confine him to bed. Such inference ought not to have been drawn since the genuineness of the certificates was not under challenge. It is nobody's case that either the certificates were false or the ground of illness was false. Even if it is assumed that there was some lapse on the part of the petitioner, it was not enough to turn down his plea and to shut the door against him, since I am satisfied that the explanation does not smack of malafides or it is not put forth as a part of dilatory strategy. Considering the observations made by the Tribunal while rejecting the application seeking condonation of delay, it would not be possible for me to ascribe to the reasonings recorded by the Tribunal keeping in view the law laid down by the Apex Court in the judgments aforestated.

10. In the result, the petition is allowed. The impugned order is set aside. The petitioner is directed to be reinstated forthwith. Since the petitioner has given up his claim for back wages at the stage of issuance of rule in the petition, he shall not be entitled for back wages. However, his services would be treated as continuous so as to claim the benefits other than monetary benefits.

. An authenticated copy of this order may be made available to the parties.

(D.B.Bhosale, J.)

dwp2192-90

HIGH COURT
CIVILI APPELLATE SIDE

WRIT PETITION NO.2192 OF 1990

Date of Judgment:

20th October, 2004

For approval and signature

THE HON'BLE MR.JUSTICE D.B.BHOSALE.

1. Whether Reporters of Local Papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder?

5. Whether it is to be circulated to the Civil Judges?

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur Aurangabad or Goa offices?